

1 NICHOLAS A. TRUTANICH
2 United States Attorney
2 District of Nevada

3 MARCELO ILLARMO, MABN 670079
4 Special Assistant United States Attorney
160 Spear Street, Suite 800
5 San Francisco, California 94105
Telephone: (415) 977-8944
6 Facsimile: (415) 744-0134
7 E-Mail: marcelo.illarmo@ssa.gov

8 Attorneys for Defendant

9 **UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA**

11 SHERMAINE CARROLL,)
12 Plaintiff,) Case No.: 2:20-cv-01953-DJA
13 v.)
14 ANDREW SAUL,) UNOPPOSED MOTION FOR EXTENSION
15 Commissioner of Social Security,) OF TIME (FIRST REQUEST)
16 Defendant.)
17

18 Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and
19 through his undersigned attorneys, hereby moves for a 62-day extension of time to file Defendant’s
20 Electronic Certified Administrative Record and Answer to Plaintiff’s Complaint. Defendant’s
21 Electronic Certified Administrative Record and Answer to Plaintiff’s Complaint are due to be filed
22 by January 19, 2021.

23 Defendant makes this request in good faith and for good cause, because the CAR, which
24 must be filed with the Answer and is necessary to adjudicate the case, is not yet available. The
25 public health emergency pandemic caused by COVID-19 has significantly impacted operations in
26 the Social Security Administration’s Office of Appellate Operations (OAO) in Falls Church,

1 Virginia, which is responsible for producing the CAR that must be filed with the Answer, per 42
2 U.S.C. §§ 405(g) and (h). Prior to the COVID-19 pandemic, to safeguard Personally Identifiable
3 Information (PII), all hearing recordings, which are part of the administrative record, were
4 downloaded onto compact discs and encrypted. OAO securely routed the encrypted discs to a
5 private contractor through a daily pickup and delivery service at the Official Duty Station (ODS) in
6 Falls Church, Virginia. The private contractor would transcribe the hearing recording and send the
7 paper copy of the hearing transcript back to OAO. OAO personnel would then scan the hearing
8 transcript into the electronic record or place the hearing transcript in the paper case file. Thereafter,
9 OAO personnel would assemble the administrative record in a prescribed order. After the advent of
10 COVID-19, the Agency has taken a number of concrete steps to transition its years-old in person
11 CAR preparation process to a fully virtual one.

12 OAO has been actively pursuing mitigation efforts to allow the remote preparation of
13 administrative records to ensure a continuity of operations. For cases in which the private
14 contractors were already in possession of hearing recordings for transcription, with the assistance of
15 the Office of Acquisitions and Grants (OAG), OAO received approval to receive these transcripts
16 from the private contractors via secured email, e.g., using password protection and redacted Social
17 Security Numbers. In April 2020, OAO began receiving such hearing transcripts from private
18 contractors via secured email.

19 For cases in which OAO had not yet submitted recordings to the private contractors before
20 March 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these
21 cases. In May 2020, OAO began encrypting hearing recordings and securely emailing them to the
22 contractors for transcription. Through the month of May, OAO and the contractors worked to
23 resolve technical issues that arose, particularly with large files.

24 As detailed in the attached declarations from Jebby Rasputnis, Executive Director of the
25 OAO, the Commissioner has redesigned its business process to allow for virtual CAR production,
26 including adopting new technology, retraining staff, modifying blanket purchase agreements with
transcription services, and adding two more transcription vendors. In addition to the changes made

1 by the Commissioner, the agency's transcription vendors are also modifying their business
2 operations to help provide virtual services. As a result, the agency was able to process 1,372 cases
3 in September, 2,115 cases in October, and 1,709 cases in November. OAO must still navigate and
4 overcome significant challenges: (1) a backlog of nearly 10,200 cases, (2) challenges in prioritizing
5 older cases using the new process, and (3) the capacity of the contracted transcription services.
6

7 OAO is trying to prioritize CAR preparation based on objective factors, such as filing date,
8 and is working diligently to address the backlog of CARS. Out of fairness to all social security
9 claimants, Defendant respectfully requests that the Court defer to OAO's prioritization of cases for
10 CAR preparation and maintain consistency in the length of extensions granted in social security
11 cases, absent a showing of exceptional circumstances. Counsel for Defendant further states that the
12 Office of General Counsel (OGC) is monitoring receipt of transcripts on a daily basis and is
13 committed to filing Answers promptly upon receipt and review of the administrative records.
14

15 Given the volume of pending cases, Defendant requests an extension in which to respond to
16 the Complaint until March 22, 2021. If Defendant is unable to produce the certified administrative
17 record necessary to file an Answer in accordance with this Order, Defendant shall request an
18 additional extension prior to the due date.
19

20 The undersigned affirms that opposing counsel does not object to the requested extension.
21
22
23
24
25
26

1 WHEREFORE, the Defendant asks the Court to enlarge the time for filing the Electronic
2 Certified Administrative Record and Answer to Plaintiff's Complaint until March 22, 2021.

3
4 Dated: January 13, 2021

5 Respectfully submitted

6 NICHOLAS A. TRUTANICH
7 United States Attorney

8 /s/ Marcelo Illarmo
9 MARCELO ILLARMO
Special Assistant United States Attorney

10 IT IS SO ORDERED:
11 
12 UNITED STATES MAGISTRATE JUDGE

13 DATED: January 14, 2021
14

CERTIFICATE OF SERVICE

I, Marcelo Illarmo, certify that the following individual(s) were served with a copy of the foregoing document on the date, and via the method of service, identified below:

CM/ECF:

Gerald Morris Welt gmwesq@weltlaw.com

Cyrus Safa cyrus.safa@rohlfinglaw.com,

Attorneys for Plaintiff

Dated January 13, 2021

/s/ Marcelo Illarmo
MARCELO ILLARMO
Special Assistant United States Attorney

DECLARATION OF JEBBY RASPUTNIS
OFFICE OF APPELLATE OPERATIONS
SOCIAL SECURITY ADMINISTRATION

I, JEBBY RASPUTNIS, Executive Director of the Social Security Administration's Office of Appellate Operations (OAO), declare and state as follows:

- 1) My office is responsible for, among other things, preparing certified copies of administrative records (CARs) for Federal court review when claimants appeal the final decisions of the Commissioner of Social Security.
- 2) Beginning in mid-March, the Social Security Administration restricted physical access to our buildings because of the COVID-19 pandemic. In order to protect the health and safety of our employees and our community, we have kept our employees on maximum telework, only authorizing limited in-office work since that time. The OAO's office in Falls Church, Virginia – which is home to OAO's Division of Civil Actions (DCA) – is included in this restriction. Prior to the pandemic, DCA staff worked out of the Falls Church office, with the support of three contracted transcription typing services, to complete CARs using a manual paper process.

RECENT PROGRESS IN PRODUCING CARs

- 3) After much work, we have redesigned our business processes to allow for a mostly virtual CAR preparation process. These new approaches required us to modify and test technology, retrain staff, and modify blanket purchasing agreements with the transcription typing services we rely on for transcripts of agency hearings. It has taken us some time and more than one try, but we now have a virtual process that has enabled us to ramp up our CAR production commensurate with the capacity of our transcription

typing services. In September, we processed 1,372 cases; in October, we processed 2,115; and, in November, we processed 1,709.

- 4) The effects of the COVID-19 pandemic also resulted in staffing and processing problems for our transcript typing service contractors. These contractors are a necessary part of the CAR preparation process because the agency did not have staff to produce hearing transcripts. The agency is supporting its existing contractors in hiring new staff by expediting their suitability investigations and credentialing.
- 5) We have historically only worked with three contracted transcript typing services, but in September 2020, we brought two additional contracts online. We are now working with five contracted transcription typing services and are augmenting those services by training in-house staff to complete transcriptions.
- 6) We continuously assess staffing needs within our DCA branches. As part of our internal transcription augmentation effort, we have transferred approximately 50 staff members to the DCA branches, and we are hiring additional Civil Actions Assistants to process this workload.

CURRENT CHALLENGES

- 7) Backlog: The backlog of work that built up during the past seven months is daunting. At the end of November, we had more than 10,200 new court cases waiting to be processed. Although we are now producing CARs at our pre-pandemic levels, the number of new complaints in the district courts has increased. In fiscal 2019, district court complaints filed against the agency averaged 1,440 per month. In the last three months, we received more than 2,000 new court cases each month. We publish quarterly workload information at

https://www.ssa.gov/appeals/DataSets/08_National_New_Court_Cases_and_Remands.html

- 8) Prioritizing Cases Using the New Process: Due to our change to a new electronic processing system, our staff had difficulty separating the oldest cases from the newer cases when transmitting audio files to the contracted transcription typing services. Although we now have an organizational system to identify older cases for processing by our contract typing services, each contractor works at a different speed based on their individual staffing challenges. As our organization system continues to improve the processing order, we expect that disparities between case filing dates and CAR completion dates will decrease. We continue to focus our efforts on processing the most aged cases.
- 9) Capacity of Contracted Transcription Typing Services: Despite our best efforts to assist, the pandemic has adversely impacted the contractors' capacity to perform their transcription services. We have been working with the existing contractors to increase their capacity, and have effectuated two new contracts. However, our contractors have finite capacity to deliver hearing transcripts. The pandemic's impact on the contractors' workforce remains outside of our control.
- 10) Overall, the timeframe for delivering a CAR in any individual case has improved. Although we remain subject to some constraints, we continue to work on increasing productivity to the best of our ability. We ask for continued patience as we work to increase our production of CARs, and address rising court case filings.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated December 04, 2020

/s/ Jebby Rasputnis
Jebby Rasputnis